

# ***EXHIBIT “M”***

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07 cv. 4780 (SAS)

MALIBU TEXTILES, INC.,

Plaintiff,

-against-

CAROL ANDERSON, INC., and CABI, LLC.,

Defendants.

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DEPOSITION OF ROBERT JABLIN

Tuesday, February 19, 2008  
6100 Park of Commerce Boulevard  
Boca Raton, Florida  
11:35 a.m. - 2:50 p.m.

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1 A LLLP.  
 2 Q And can you tell me, please, what position  
 3 you have at Metritek.  
 4 A I'm the owner.  
 5 Q And in addition to being the owner, are  
 6 you an officer?  
 7 A Yes.  
 8 Q What office do you hold?  
 9 A I believe president.  
 10 Q And can you tell me, please, for how long  
 11 Metritek LLLP has been in existence.  
 12 A Twenty-two years.  
 13 Q And have you been the president of  
 14 Metritek LLLP for the 22 years?  
 15 A Yes.  
 16 Q Can you tell me, please, what the business  
 17 of Metritek is today.  
 18 A Manufacturing of laces for intimate  
 19 apparel, lingerie and dress.  
 20 Q And has it been in that same business for  
 21 the past 22 years?  
 22 A Yes.  
 23 Q And can you tell me what your day-to-day  
 24 responsibilities are today at Metritek.  
 25 A Overseeing the entire running of the

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1 on in the document in front of you?  
 2 A Yes. I believe so.  
 3 Q Did you have a chance to review the  
 4 Items 1, 2, 3, and 4 that are listed on the rider to  
 5 subpoena?  
 6 A Yes.  
 7 Q And in the context of these proceedings  
 8 this morning, have you brought any documents with  
 9 you responsive to Item 1, Item 2, Item 3, or Item 4  
 10 set forth in the rider to subpoena?  
 11 A Yes.  
 12 Q What have you brought?  
 13 A Just the history of the patterns.  
 14 Q May I see that, please.  
 15 Are these all separate documents?  
 16 A Yes.  
 17 MR. LAZARUS: Let's go off the record.  
 18 (Thereupon, a discussion was held off  
 19 the record.)  
 20 MR. LAZARUS: I'm going to mark these then  
 21 as follows. We will have the document that  
 22 begins with a designation style 34080/1307 as  
 23 Jablin 5, and I will describe that and then  
 24 give it to our reporter for her to mark.  
 25 The first page has typewritten style

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1 company.  
 2 Q Can you tell me, please, what your duties  
 3 and responsibilities at Metritek were in 2002.  
 4 A The same.  
 5 Q Can you tell me, please, in 2002,  
 6 approximately how many employees Metritek had?  
 7 A Seventy.  
 8 Q And can you tell me by category,  
 9 administrative, warehouse --  
 10 A No, I can't.  
 11 Q -- how it's broken down?  
 12 A No. I can't break that down.  
 13 Q I want to show you a document that has  
 14 been marked as Jablin 4 and ask you if you have seen  
 15 that document before.  
 16 A Yes.  
 17 Q I want you with me, please, to turn to the  
 18 document that has a preprinted or is a preprinted  
 19 form, at the top of which is written "United States  
 20 District Court, Southern District of Florida."  
 21 Did you receive a copy of that form  
 22 sometime in late December, early January?  
 23 A I believe so.  
 24 Q And when you received that form, did you  
 25 see a rider to subpoena, that is two pages further

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1 34080/1307. And the next page says at the top  
 2 "Hope Industries, Inc., Gray Sample," and  
 3 refers to a style 34080 underneath a line  
 4 "Metritek/Louis."  
 5 The next page is a Metritek drafting order  
 6 dated February 11, 1992, referring to a  
 7 Drafting Order Number 238, underneath which is  
 8 written 34080.  
 9 And the next page is a color copy, at the  
 10 top of which is a sticker indicating Pattern  
 11 34080/1307.  
 12 And the last page is a black and white  
 13 copy at the base of which appears to be  
 14 written -- what appears to be the base -- the  
 15 number 121091.  
 16 And we will mark that as 5.  
 17 (Thereupon, Jablin Exhibit 5 was marked  
 18 for identification.)  
 19 MR. LAZARUS: The next document will be  
 20 marked as Jablin 6, and it is a group of  
 21 documents, the first of which is a page, at the  
 22 upper left-hand corner of which is indicated  
 23 Style Number 35465/1468.  
 24 And the next page is a page at the upper  
 25 left-hand corner of which is indicated "Hope

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1 see that?  
 2 A Yes.  
 3 Q Tell me, please, what happened in June of  
 4 '02 that you are referring to when you refer to  
 5 Malibu commissioning the design. What did they do?  
 6 A What they would have done is --  
 7 Q Not what they would have done, but what  
 8 did they do. Do you have any specific recollection  
 9 as to the event you described in the opening  
 10 paragraph of this letter, that is Malibu  
 11 commissioning Metritek in June of '02?  
 12 A Yes. But we discussed that, regarding the  
 13 concept of the sketch and how this came about.  
 14 Q Tell me what they did. Tell me what  
 15 happened in June of '02.  
 16 A I can't tell you it's definitely June of  
 17 '02. I don't know that is the exact date. But  
 18 they -- I would have sat down with either John or  
 19 Richard and -- to develop a new concept for a new  
 20 lace. They would have given me the parameters that  
 21 they were looking for.  
 22 I then brought the parameters back here to  
 23 Metritek, gave them to my designer, and we generated  
 24 a sketch for their approval. I do not recall if  
 25 there was one or there were changes made to them.

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1 But upon the finished sketch, we then proceeded with  
 2 the drafting and the order.  
 3 Q Okay. And when you signed this letter on  
 4 or about October 22, 2007, what did you mean when  
 5 you said that you, Metritek, were commissioned to  
 6 create this Exhibit A design? What is it that you  
 7 meant, if you know, when you signed a letter that  
 8 said that the company commissioned you to create  
 9 this?  
 10 A By giving me the order on the finished  
 11 pattern is commissioning me to go ahead with this  
 12 design.  
 13 Q The order for the design or the order for  
 14 the knitting?  
 15 A For the knitting.  
 16 Q Now, who -- withdrawn.  
 17 The next paragraph says, "In exchange for  
 18 good and valuable consideration acknowledged as  
 19 received, Company Malibu commissioned Metritek to  
 20 create the original design specified in Exhibit A,  
 21 the work, which the company acknowledges Metritek  
 22 delivered to it."  
 23 Who created the design in Exhibit A, that  
 24 is Exhibit A?  
 25 A Joe Pumbo.

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1 Q When you signed this letter -- withdrawn.  
 2 In October of 2007, the second paragraph  
 3 states that Metritek and Company, Metritek and  
 4 Malibu "are agreed that the works are made for hire  
 5 for the Company, as that term is defined in Section  
 6 101 of the 1976 Copyright Act." Do you see that?  
 7 A Yes.  
 8 Q Can you please tell me what the definition  
 9 of a work made for hire in the 1976 Copyright Act  
 10 is?  
 11 A No.  
 12 Q When you signed this letter in October of  
 13 2007, did you have an understanding as to what the  
 14 definition of a work made for hire was under the  
 15 Copyright Act of 1976?  
 16 A Not a full understanding, no.  
 17 Q What understanding did you have?  
 18 A Just that we were -- we designed it and we  
 19 assigned the copyrights to them, that they have the  
 20 right to do it. Other than that, I really don't get  
 21 involved in copyright law.  
 22 Q But you signed a letter wherein you agreed  
 23 the works were made for hire under the Copyright Act  
 24 of 1976.  
 25 Am I correct that when you signed this

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1 letter, you didn't have a full understanding of what  
 2 that meant?  
 3 A That is correct.  
 4 Q Did you have any understanding --  
 5 A No.  
 6 Q -- of what that meant?  
 7 A No. Sorry.  
 8 Q And is there a reason, sir, that you would  
 9 sign a letter reflecting an agreement with respect  
 10 to something that you didn't have any understanding?  
 11 A Yes.  
 12 Q And what is the reason?  
 13 A To allow my customer to defend the  
 14 copyrights.  
 15 Q So that in order to facilitate Malibu's  
 16 prosecution in fact of this copyright claim, you  
 17 signed a letter with respect to which at least this  
 18 sentence you really didn't know what you were  
 19 signing?  
 20 A I knew what I was signing. I don't know  
 21 what this is about.  
 22 Q Now, the letter goes on to state that "to  
 23 the extent that the works are determined not to be  
 24 works made for hire, Metritek hereby irrevocably and  
 25 perpetually assigns and transfers ownership of all

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1 rights, including but not limited to copyright in  
2 works throughout the world to the Company and  
3 expressly waive any artist's rights or moral rights  
4 Metritek might have in the works."

5 Do you see that?

6 A Yes.

7 Q Prior to October 22, 2007, and with  
8 respect to the assignment of the copyright in this  
9 pattern to Metritek -- to Malibu, can you tell me  
10 all of the discussions that you had about assigning  
11 the copyright to Malibu.

12 A There were no discussions. This is  
13 something that is done with my company and all my  
14 customers.

15 Q Did you ever have a discussion with Malibu  
16 about the assignment and transfer of the copyright  
17 in the pattern which is attached as Exhibit A to  
18 Malibu -- to this letter?

19 A I'm sorry. Can you --

20 Q Yes. I apologize.

21 Prior to October 22, 2007, did you ever  
22 have a specific discussion with Malibu wherein  
23 Malibu assigned the -- withdrawn -- wherein Metritek  
24 assigned the copyright in the Pattern 2479/1088 to  
25 Malibu?

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1 A There were no conversations, because this  
2 is the way we run our company and have run it for  
3 years. What we design for our customers is done on  
4 an exclusive basis, and upon giving us the order for  
5 the sketch, to the artwork that we did for them,  
6 they have the right to copyright the design, as long  
7 as we get all the knitting on the pattern.

8 Q And did you ever have a discussion with  
9 Malibu wherein that was the specific agreement that  
10 you reached with Malibu?

11 A If there was a conversation, it was years  
12 ago, because this is the agreement I have with every  
13 customer.

14 Q Metritek does register some copyrights on  
15 its own, doesn't it?

16 A No.

17 Q You are sure?

18 A Yes.

19 Q Prior to October 22, 2007, did Metritek  
20 have an understanding that the works that were  
21 created by Metritek for Malibu were works made for  
22 hire?

23 A I'm sorry. I don't understand the  
24 question.

25 MR. LAZARUS: Can we read it back.

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1 (Thereupon the question was read back by  
2 the reporter.)

3 THE WITNESS: Could you explain, please.  
4 BY MR. LAZARUS:

5 Q No. You don't understand the question?  
6 I'm referring to whether or not you had an agreement  
7 with Malibu that the works that were created by  
8 Metritek for Malibu were works made for hire.

9 A When you say works made for hire, can you  
10 explain that. It's a legal term.

11 Q What it says in this letter, referring to  
12 the October 2, 2007 letter. Did you have such an  
13 agreement with Malibu?

14 A I had the agreement that I stated to you  
15 with Malibu, that all of my customers, including  
16 Malibu, have the right to copyright the artwork once  
17 we have gotten the original order.

18 Q Is it once you've gotten the original  
19 order or for so long as you get all the knit work?

20 A It's a combination, and it's an  
21 understanding that I have with every customer.

22 Q Tell me exactly what the understanding is.

23 A That anything that we design and create,  
24 our customer has the right to copyright it and  
25 defend it, but we get all of the knitting regarding

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1 the pattern.

2 Q And if you don't?

3 A If we don't, then I have a problem with  
4 the customer that we take up separately.

5 Q Is it a problem with the copyright or is  
6 it a problem with the customer?

7 A With the customer.

8 Q Because the copyright is given away?

9 A That's correct.

10 Q And this is an understanding, sir, that  
11 you had for years back with Malibu?

12 A With Malibu and all my customers.

13 Q Can you tell me, please, why it doesn't  
14 say that in this letter of October 22, 2007?

15 A I don't know. I didn't write the letter.

16 Q You signed it.

17 A I signed it. I didn't write it.

18 Q So the letter is not accurate?

19 A I didn't say that.

20 Q Well, we looked at the first sentence, and  
21 the first sentence deals with this notion of works  
22 made for hire, with respect to which I asked you  
23 when you made that agreement, and --

24 A The agreement, as I've said to you many  
25 times already, has been done for years. The legal



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1 Q Who explained it to you?  
 2 A Nancy.  
 3 Q What did she explain to you?  
 4 A I don't recall.  
 5 Q You have no idea?  
 6 A No. Because I cannot sit here and quote  
 7 the legal terminology back to you.  
 8 Q What did she tell you in terms of the  
 9 reason she required the different letter?  
 10 A It was explained to me and I don't recall,  
 11 sir.  
 12 Q As you sit here today, do you know what  
 13 the difference is in terms of the earlier letter,  
 14 which is Bates stamped P7, and the later letter of  
 15 1/28/08, which is Bates stamped P132?  
 16 A No.  
 17 Q With respect to the January 28, 2008  
 18 letter, P132, and specifically with respect to the  
 19 June 2002 commissioned date, can you tell me,  
 20 please, what happened on that day.  
 21 I'm looking -- I'm sorry.  
 22 A Well, I can tell you, but I have to find  
 23 the papers.  
 24 We were given the project of creating a  
 25 new pattern.

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1 Q And who gave you that project?  
 2 A It was either John -- most likely John,  
 3 but it may have been Richard.  
 4 Q And that was in a conversation that we've  
 5 talked about?  
 6 A Yes.  
 7 Q And do you recall what he said to you in  
 8 that conversation?  
 9 A It's the same thing that we repeated now  
 10 several times about the same pattern, about creating  
 11 a pattern.  
 12 Q In any of the conversations relative to  
 13 2479/2351, did you ever say to Mr. Irwin or  
 14 Mr. Samuels or to Malibu, anyone at Malibu, that you  
 15 assigned the copyrights in the pattern to them? Did  
 16 you ever say those words to them?  
 17 A No. I didn't have to.  
 18 Q Is there any document with respect to any  
 19 of the patterns that we have discussed here today  
 20 other than the letters of October 22, 2007 and  
 21 January 28, 2008, wherein you purport to assign a  
 22 copyright to them?  
 23 A There are no documents, but I can get you  
 24 legal letters if you want from every one of my  
 25 customers who has the understanding that I explained

1 to you earlier.  
 2 Q And the understanding is what?  
 3 A That any artwork that I design, any  
 4 sketches that we do, they have the full right to  
 5 copyright them worldwide, providing I get the  
 6 knitting.  
 7 Q And this pattern, this pattern meaning  
 8 Patterns 2479 and 2351, who created those patterns?  
 9 A We did, sir. Joe Polumbo.  
 10 Q And with respect to Patterns 2479/2351,  
 11 what happens if it is determined that these works  
 12 are not made -- are not works for hire under the  
 13 Copyright Act, in terms of the ownership of the  
 14 copyrights?  
 15 A Again, I'll refer back to my same answer  
 16 as you asked me on the other letter.  
 17 Q And that was what?  
 18 A I don't recall. I can tell you exactly  
 19 one thing, is that I will keep repeating the same  
 20 thing. I don't understand the legal aspects of it.  
 21 I don't understand the -- you are constantly trying  
 22 to catch me on legal wording.  
 23 The understanding is exactly what I've  
 24 explained to you with every one of my customers that  
 25 I have had for the last 22 years in this business

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1 and 25 years in my father's business, that the  
 2 copyrights, they are assigned to them. They have  
 3 the right to copyright and defend worldwide any  
 4 styles that we create for them.  
 5 That is plain wording. I can't tell you  
 6 how you word that legally.  
 7 Q Did you have a lawyer look at these  
 8 letters of 1/28/08 before you signed them?  
 9 A No.  
 10 Q How about the October 22, 2007 letter?  
 11 A I believe so.  
 12 Q And he looked at that before you signed  
 13 it?  
 14 A I believe so.  
 15 Q And his name is?  
 16 A Marvin Gutter.  
 17 Q Where is he?  
 18 A He's here in town.  
 19 Q On the return of the transcript, if I can  
 20 get his name and phone number.  
 21 A But I don't recall if I actually sent it  
 22 to him. I remember speaking to him about it.  
 23 Q Is there any written policy of Metritek  
 24 pertaining to the ownership of the copyrights?  
 25 A No, sir.